

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
E.S., Appellant)	
)	
and)	Docket No. 22-0628
)	Issued: November 1, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
EUGENE J. TOWBIN HEALTHCARE)	
CENTER, North Little Rock, AR, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

On March 25, 2022 appellant filed a timely appeal from a February 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0628.

On January 25, 2022 appellant, then a 53-year-old nurse anesthetist, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2021 she contracted COVID-19 due to exposure from patients and coworkers who were diagnosed with COVID-19 while in the performance of duty. She stopped work on December 27, 2021 and returned on January 10, 2022.

Appellant submitted a laboratory test result, dated December 31, 2021, which revealed that she tested positive for COVID-19.

By decision dated February 7, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the December 23, 2021 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other benefits. OWCP notified appellant that she could claim compensation for wage-loss resulting from the decision by filing a claim for compensation (Form CA-7).

The Board, having duly considered this matter, finds that this case is not in posture for decision.

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.¹ This latter section provides that written notice of injury shall be given within 30 days.² The context of section 8122 makes clear that this means within 30 days of the injury.³

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁴

FECA Bulletin No. 21-09 at subsection II.2., however, provides that, "The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (*see* 20 C.F.R. 10.5(ee)), and considers the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus."⁵

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

¹ *Id.* at § 8118(a).

² *Id.* at § 8122(a)(2).

³ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁴ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁵ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 was signed into law. Pub. L. No. 117-2. OWCP issued FECA Bulletin No. 21-09 to provide guidance regarding the processing of COVID-19 FECA claims as set forth in the ARPA. Previously, COVID-19 claims under FECA were processed under the guidelines provided by FECA Bulletin No. 20-05 (released March 31, 2020) and FECA Bulletin No. 21-01 (released October 21, 2020). FECA Bulletin No. 21-09 supersedes FECA Bulletin Nos. 20-05 and 21-01.

⁶ *See e.g., Order Remanding Case, W.G.*, Docket No. 18-0451 (issued February 21, 2019) (The Board found that OWCP failed to properly develop the medical evidence by requesting the DMA to provide an impairment rating in accordance with the new guidance in FECA Bulletin No. 17-06 for consistently rating upper extremity impairments. The Board remanded the case for further development consistent with OWCP procedures in FECA Bulletin No. 17-06); *Order Remanding Case, H.W.*, Docket No. 10-404 (issued September 28, 2011) (The Board remanded the case to OWCP for selection of another impartial medical specialist in accordance with its procedures).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2022 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 1, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board